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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/035,389	12/28/2001	Gholam-Reza Zadno-Azizi	PERCUS.113A	4551
20995	7590	02/18/2004		
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER HAN, MARK K	
			ART UNIT	PAPER NUMBER
			3763	10

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/035,389

Applicant(s)

ZADNO-AZIZI, GHOLAM-REZA

Examiner

Mark K Han

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-44 and 47 is/are rejected.
- 7) ☒ Claim(s) 45 and 46 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 6.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on 06 January 2004 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 6,135,991 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 9-13, 18, 19 and 22-35 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,462,529 to Simpson et al. (hereinafter "Simpson").

Simpson discloses the claimed invention. See col. 6, line 23 through col. 7, line 15 and col. 8, lines 57-66. Further in regards to claim 30, it is inherent that the guidewire has holes at its proximal for the purpose of introducing inflation fluid to the occlusive device.

3. Claims 36-44 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,163,905 to Don Michael.

Don Michael discloses the claimed invention. See col. 6, line 22 through col. 7, line 20.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson.

Simpson discloses the claimed invention as shown above. Simpson does not disclose expressly the distance between the catheter tip and the occlusive device. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to place the catheter tip between about 0.5 and 10 mm or between about 1 and 5 mm from the occlusive device because Applicant has not disclosed that such a distance provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the catheter tip at a distance determined based on optimal results because such a distance would be dependant on optimal position in which agents can be delivered. Therefore, it would have been an obvious matter of design choice to modify Simpson to obtain the invention as specified in claims 20 and 21.

5. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson in view of U.S. Patent No. 5,588,962 to Nicholas et al. (hereinafter "Nicholas").

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Simpson discloses the claimed invention except for using a radioisotope. Nicholas discloses using a radioactive drug to treat an arterial lesion. See col. 6, lines 42-65. It would have been obvious to one of ordinary skill in the art to modify the invention of Simpson by substituting a radioisotope for the thrombolytic agent of Simpson as an alternative means to reduce restenosis.

6. Claims 6-8 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simpson in view of U.S. Patent No. 5,810,767 to Klein.

Simpson discloses the claimed invention except for the flow rate of drug delivery. Klein suggests a flow rate from 1 ml/min to 40 ml/min (or 0.0167 cc/sec to 0.67 cc/sec). See col. 11, lines 55-60. It would have been obvious to one of ordinary skill in the art to modify the invention of Simpson to deliver the fluid at a rate suggested by Klein in order to provide efficient drug delivery.

Allowable Subject Matter

7. Claims 45 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark K Han whose telephone number is 703-308-4543. The examiner can normally be reached on Monday to Friday, 9 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Han
Patent Examiner
Art Unit 3763

mkh
February 13, 2004



BRIAN L. CASLER
SUPERVISORY PATENT EXAMINER
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